

 HAWAII HEALTH SYSTEMS C O R P O R A T I O N <i>"Touching Lives Everyday"</i>	Department: Corporate Finance	Policy No.: PUR 0007
		Revision No.: 1
Policies and Procedures	Issued by: Kelley Roberson COO & CFO	Effective Date: October 1, 2007
	Approved by: Thomas M. Driskill, Jr. President & CEO	Supersedes Policy: November 2006
Subject: Contracts		Page: 1 of 6

- I. **PURPOSE:** Whenever an agreement with promises and obligations is reached between the Hawaii Health Systems Corporation (HHSC) or one of the Regional System Boards and one or more parties, a contract is required. A contract is required in order to document the understanding of the parties. Contracts are required where HHSC is spending money, using assets, or making other binding promises. This policy establishes the type of contracts, when they should be used, and the documentation needed to establish contracting files that can be audited.
- II. **POLICY:** Documentation is required for all financial transactions and agreements between HHSC and another entity. In order to establish appropriate records for auditing and other reviews, contract files must be established. The Regional CEO/facility administrator is responsible for this function and may delegate this task to his staff.
- III. **PROCEDURE:**

Contract Categories

1. Purchase Orders:

- (a) A purchase order is an offer to buy a product or service from a specific vendor. It becomes a contract upon acceptance of the offer. Acceptance occurs when the vendor signs the purchase order and indicates agreement to the terms and delivers the signed purchase order back to HHSC. Acceptance more frequently occurs upon performance by the vendor at the time of delivery of the goods or services. Once acceptance occurs, a contract document has been formed, assuming the essential terms are outlined. A purchase order is appropriate for use where the goods or services are simple, easily described, and performance can occur at one time. It is not advisable to use a purchase order where special terms and conditions are required, where the purchase will require several transactions, or where the terms are not definite.
- (b) A purchase order (PO) is generally appropriate for acquisition of goods and sometimes services below \$25,999. Special Conditions may be noted on the PO to clarify the purchase.

- (c) A PO may be used as a contract for goods between \$25,000 and \$100,000 provided the HHSC Abbreviated General Conditions and any Special Conditions are appended and noted on the PO.
 - (d) A PO may be used for simple repair and maintenance projects less than \$10,000. A PO is not appropriate for construction contracts or other contracts requiring extensive terms.
 - (e) Approval of the corporate comptroller is required for purchase orders over \$100,000.
 - (f) Purchase orders may be “extended”, as long as applicable procurement rules are followed (e.g., competition, etc.). However, it is recommended that Short Form Agreements be used instead of renewing purchase orders.
 - (g) Issuance of a purchase order instead of another contract document does NOT affect the procurement method chosen. Use of a PO does not obviate the need to obtain appropriate levels of competition. Use of a PO does not affect the need for legal review (See PUR 0014).
2. Vendor Contracts. A vendor contract is any contract that originates with the vendor. It is usually a preprinted form contract. Use of vendor contracts is discouraged since they are written to be favorable to the vendor, not the purchaser. A vendor contract will be acceptable, provided sufficient detail, pricing, and schedule data are provided, legal review is obtained and followed as set forth in PUR 0014, and HHSC Abbreviated General Conditions are attached. The legal department must approve any deviation from these standards.
 3. Short Form Agreement. A short form agreement (SFA) is a substitute for a purchase order. Contract Management maintains the SFA form and the most recent version should always be used. It may be used whenever deemed appropriate by the contract manager, usually on simple, short term purchases.
 4. Formal Contract. A formal HHSC formatted contract is required for all goods and services greater than \$100,000.
 5. Letters of Commitment made through HHSC authorized group purchasing organization (GPOs), without dollar limit, are written documents outlining the pricing level tiers and other understandings with the GPO Vendor. They shall be reviewed by the Director of Material Management and approved by the COO/CFO, no matter the dollar amounts involved. LOCs should generally be put into place on a system-wide basis by the Corporate Materials Management office to maximize the cost savings for the system. See PUR 0025 for further details.
 6. Memorandum of Agreements (MOAs): A MOA documents understandings and expectations between governmental agencies and does not include the expenditure of money. Educational MOAs are processed through the Corporate Human Resources Department. Copies shall be held by each entity.

7. Third Party Agreements: Contracts and agreements with third party medical and hospital insurers will be subject to review, central negotiation, and processing by HHSC staff, with facility consultation. The Director of Reimbursement shall be consulted when a third party payer contract is being discussed.
8. Municipal Leases: No municipal leases are to be entered into without approval by the Corporate COO/CFO.
9. Financial Loans/installment payment purchases: May be executed by the facilities with Corporate COO/CFO prior approval. The HHSC CFO must approve all financing agreements.
10. Construction: Construction contracts, due to their nature and complexity, shall be on the HHSC formal construction forms. See the Capital Improvement policies for more details.

- B. Forms:** HHSC formatted contracts have been developed by the Corporate Contracts Managers and Corporate General Counsel for the various types of contracts. The most recent forms must be used.
- C. Processing:** Form Contracts are developed by the Legal Department. The contract management department shall process requests for purchase of goods, services, and construction upon receipt of a Purchase Request. See the policy and procedure "Requesting Purchasing Assistance from Contract Management", PUR 0019, for further details.
- D. Contract Files:** Contract files should be maintained at each contract management office location and contain, as a minimum, the following:
1. Facility, name of technical representative;
 2. Contract and any supplements.
 3. Description of services;
 4. Name of contractor;
 5. Amount of contract (and Not to Exceed Amounts);
 6. Start date of contract;
 7. Expiration date of contract;
 8. Renewal clause (Y/N);
 9. Amount of renewal;
 10. Period of renewal;
 11. Date to notify for cancellation/renewal;
 12. Procurement Method documentation: type of solicitation; responses from vendors; selection materials; award letters; exception to competitive procurement approvals (such as exemption request and approval), etc.
 13. OIG/GSA verification documents (initial and annual rechecks);
 14. Fair Market Value documentation for Health Care Provider Contracts
 15. Procurement Requests with approvals;
 16. Comments.

Original contract files shall be kept in accordance with records retention policies established by HHSC and shall stay with the contract manager responsible for the contract. An electronic contract tracking system may be used as the repository.

E. Reviews/Monitoring: Contract files shall be reviewed periodically by Contract Management executives or designees or the internal audit department to determine procurement code compliance. The contractor's performance should be reviewed on a periodic basis as outlined in the contract to determine quality services/goods have been purchased. Quality assurance as it relates to the performance by the contractor shall be the responsibility of the Regional CEO or respective VP for the corporate office. Technical Representatives may be delegated the task of evaluating and monitoring performance. Medical Staffs shall also monitor performance of clinical services contract.

F. Contract Writing: Legal department shall assist in writing and reviewing contracts. (See PUR 0014 for details relating to legal review and terms in HHSC contracts). The following information is offered relating to suggested terms and methods of developing a good contract.

1. Scope of Services: State the objective clearly; do not leave anything important to be subject to interpretation. Identify all deliverables clearly (i.e., technical manual, interim report, final product, etc.). The need for progress reports, drafts, or a workplan shall be stated in the Scope of Services. Express standards clearly and articulate mandatory requirements. If HHSC is providing any assistance (i.e., documentation, equipment, or research), so state. Elaborate on any special conditions, performance warranties, or key personnel that are expected to perform this contract.
2. Time Schedule: Clearly state commencement date or a clear basis upon which to determine commencement date. Clearly identify time of day when work may be performed. State end date or number of days (designate calendar or working days) by which performance is to be completed. The addition of the term, "time is of the essence," will help in determining liquidated damages for delays. If HHSC has a specific order and time period toward completion, so state. If completion of any task is a precondition of the next task or if failure to complete one task is grounds for termination, make it clear at this time. Expound on methods and circumstances when extension due to delays are allowable and how this is calculated.
3. Compensation and Payment Schedule: Clearly state the total price describing all items covered by price. If allowable expenses are included in the total price, describe expense components in detail. Description of source of payment, amount, and timing of advanced payment, and determination of progress payments should be included. The following statements should appear, if applicable:
 - a. A statement that payment of a progress payment shall not be construed as an absolute acceptance of the work done up to the time of the payments, but the entire work is subject to acceptance at the time the contractor advises HHSC that the work is complete.
 - b. A clear statement of the amount of any retainage to be withheld from progress payment

- c. A clear description of any certifications from third parties, if any, are required as a precondition to making any payment.
- d. A statement that any reasonable modification of the scope of work, which does not materially add to the cost of the work, shall be performed without extra payment on account of those changes.
- e. A clear statement of how the method and schedule of payments, together with total contract price, will be affected if the scope of work is diminished.
- f. A statement of whether and to what extent the contractor may be allowed additional compensation in the event of delays in performance.

G. Special Conditions: Special conditions are the terms which are unique to the particular agreement or which (for good business reasons) vary the terms of the agreement and/or general conditions. Examples of topics that may be included as special conditions are:

- 1. Delivery of the work product to a particular place other than to the address of the facility procurement officer stated in the agreement.
- 2. Acceptance criteria (unless included in the scope of services).
- 3. Provision that commencing work before the agreement is executed by HHSC or before notice to proceed is issued at contractor's own risk.
- 4. Specific remedies.
- 5. Retainage.
- 6. Counterpart signatures.
- 7. Prohibited activities.
- 8. Patents and copyrights.
- 9. Special warranties.
- 10. Provisions required for federally funded contracts.
- 11. Listing of specific actions or inactions by the contractor that entitle HHSC to terminate the agreement.
- 12. Type(s) of insurance required by HHSC.
- 13. Identification of the contractor's key personnel and any requirements related to the use of such personnel (can also be included in the scope of services).
- 14. Special reporting provisions.
- 15. Special recordkeeping and audit requirements.

16. Reimbursement of expenses.

H. Automatic Extensions in HHSC contracts are not allowed unless specifically approved on an exception basis by the HHSC CEO or COO in advance of contract preparation. A no cost MOA where a long term relationship exists may be automatically renewed with the approval of the Regional CEO. This is the only exception to the Automatic Renewal policy.

I. Contractor Federal exclusionary status will be checked by the procurement personnel procuring the goods or services before the contract is entered into and on an annual basis thereafter. Both the OIG list and the GSA list will be checked. HHSC will not contract or pay any company or person whose name is on the federal exclusionary list.

IV. APPLICABILITY: All HHSC facilities and HHSC Corporate Staff.

IV. REFERENCES: HRS 323F; HRS Chapter 103D, and implementing regulations (for corporate office and system-wide contracts). Reference to Chapter 103D and implementing regulations does not intend to waive any applicable exemption.